

On January 31, 2007 appellant, a 60-year-old painter, filed an occupational disease claim, (Form CA-2), alleging that his exposure to high noise levels in the shops and work site locations where he worked caused his hearing loss. He retired in February 2007.

The employing establishment submitted annual hearing conservation data and noise exposure information from 1980. Appellant provided information about his history of noise exposure at the employing establishment and previous employers, starting in 1965.

The Office referred appellant for a medical examination to determine the relationship between his hearing loss and his federal duties. On April 23, 2007 Dr. Meredith Pang, a Board-certified otolaryngologist, examined him and reviewed his medical history. She noted that appellant had worked at the employing establishment since December 1980, where he was exposed to occupational noise levels above 85 decibels and had no significant exposure to gunfire, blasting or jet engine noise prior to that time. Dr. Pang found no history of loud recreational noise exposure, vertigo, inherited hearing loss or systematic illness associated with hearing loss. She noted that appellant's first audiogram, dated October 15, 1980, showed mild high frequency hearing loss in the right ear and mild to moderate loss in the left ear. Dr. Pang found that appellant's hearing had worsened since that time.

On examination, Dr. Pang found that appellant's tympanic membranes were intact and had good mobility, with slight right anterior scarring on the anterior membrane. She found no ear canal lesion that would contribute to hearing loss. Dr. Pang noted that the Rinne test was positive bilaterally and that the Weber tuning fork test lateralized to the right at 256 hertz (Hz) and remained midline at 512 Hz. The audiogram revealed a mild mix of low and high frequency hearing loss, caused by both middle ear and sensorineural losses, in the right ear. The left ear had moderate high frequency sensorineural hearing loss. Appellant's speech reception thresholds were normal for both ears, but his speech discrimination scores were only at 80 percent in his left ear. Dr. Pang opined that the final audiometric test results were consistent and reliable. She found that appellant's history of noise exposure was sufficient in intensity and duration to have aggravated his hearing loss. Dr. Pang stated that appellant's hearing loss was stable and would not improve. She also found that appellant had 0 percent impairment, because his hearing loss was not severe enough to exceed the threshold amount indicated by the Office's formula.

By decision dated May 9, 2007, the Office accepted appellant's claim for bilateral hearing loss. On May 29, 2007 the Office provided the medical records, including Dr. Pang's report and audiograms, to the Office medical adviser for a schedule award determination.

On June 16, 2007 Dr. David Schindler a Board-certified otolaryngologist serving as an Office medical adviser, opined that appellant's diagnosis of bilateral high-frequency hearing loss, consistent with noise exposure, was causally related to factors of his federal employment. He noted that appellant's April 23, 2007 audiogram, which measured hearing loss at 500, 1,000, 2,000 and 3,000 Hz, revealed right ear losses of 15, 15, 15 and 25 decibels and left ear losses of 10, 10, 10 and 55 decibels, respectively. Applying the Office's hearing loss standards, Dr. Schindler found that appellant had 0 percent right ear hearing loss, 0 percent left ear hearing loss and 0 percent bilateral hearing loss. He stated that hearing aids were not indicated by appellant's current hearing loss.

By decision dated July 31, 2007, the Office denied appellant's claim for a schedule award on the grounds that the medical evidence established that he had no compensable impairment

from his accepted bilateral hearing loss. It found that appellant's hearing loss was within the normal range of conversational volume.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act and its implementing regulations set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use of scheduled members or functions of the body.¹ However, the Act does not specify the manner in which the percentage of loss is to be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.²

The Office evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.³ Using the frequencies of 500, 1,000, 2,000 and 3,000 Hz, the losses at each frequency are added up and averaged.⁴ Then, the fence of 25 decibels is deducted because, as the A.M.A., *Guides* points out, losses below 25 decibels result in no impairment in the ability to hear everyday speech under everyday conditions.⁵ The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.⁶ The binaural loss is determined by calculating the loss in each ear using the formula for monaural loss; the lesser loss is multiplied by five, then added to the greater loss and the total is divided by six to arrive at the amount of the binaural hearing loss.⁷ The Board has concurred in the Office's adoption of this standard for evaluating hearing loss.⁸

ANALYSIS

The Office referred appellant to Dr. Pang, a Board-certified otolaryngologist, for a second opinion on the cause of his hearing loss. Based on Dr. Pang's opinion, the Office accepted appellant's claim for a bilateral hearing loss. The Office then properly referred the medical record to Dr. Schindler, an Office medical adviser. He reviewed Dr. Pang's report and properly utilized the A.M.A., *Guides* to determine whether appellant sustained a compensable

¹ 5 U.S.C. §§ 8101-8193; 20 C.F.R. § 10.404.

² 20 C.F.R. § 10.404.

³ A.M.A., *Guides* 246-51 (5th ed., 2001).

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Donald Stockstad*, 53 ECAB 301 (2002), *petition for reconsideration granted, modifying prior decision*, Docket No. 01-1570 (issued August 13, 2002).

hearing loss. Dr. Schindler added the right ear decibel losses recorded at 500, 1,000, 2,000 and 3,000 Hz, which were 15, 15, 15 and 25 decibels, respectively, for a total of 70 decibels. When divided by 4, the result is an average hearing loss of 16.25 decibels. The average loss was then reduced by the “fence” of 25 decibels to equal 0, which, when multiplied by the established factor of 1.5, results in a 0 percent monaural hearing loss for the right ear. Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 Hz revealed decibel losses of 10, 10, 10 and 55 decibels, respectively, for a total of 85 decibels. When divided by 4, the result is an average hearing loss of 21.25 decibels. The average loss was then reduced by the “fence” of 25 decibels to equal 0, which, when multiplied by the established factor of 1.5, results in a 0 percent monaural hearing loss for the left ear. Consequently, the evidence of record establishes that appellant has no ratable hearing loss in either ear. The Board finds that the Office properly determined that appellant’s employment-related hearing loss was not significant enough to be ratable. Thus, he was not entitled to a schedule award.

CONCLUSION

The Board finds that appellant does not have a ratable employment-related bilateral hearing loss; therefore, he is not entitled to a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers’ Compensation Programs dated July 31, 2007 is affirmed.

Issued: March 18, 2008
Washington, DC

Alec J. Koromilas, Chief Judge
Employees’ Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees’ Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees’ Compensation Appeals Board